4. The Field Notes appertaining to the foregoing survey; and

5. A letter dated September 17, 1982, from the Chief Cadastral Surveyor of Arizona to the Solicitor General, transmitting the foregoing documents (reproduced as Appendix A, *infra*, 1a–2a).

B

As we have elaborated in our Reply Brief (at 22–31), we believe neither the Court nor its Special Master is required to review this or any other final and formal administrative determination by the Department of the Interior defining Indian Reservation boundaries. Accordingly, we do no more than submit the documents evidencing the fact that such a final determination has been made. Suffice it to say that, in this instance (as the plats recite), the boundary adjustments are attributable to a gradual westward movement of the Colorado River between 1905 (when the previous survey was made) and the early 1950s (when the River was channelized), resulting in substantial accretion on the eastern bank, inuring to the Fort Mojave Reservation where it is the upland owner. See 1962 Field Notes (Item 2, *supra*) at 1B; 1982 Field Notes (Item 4, *supra*) at 3.

We add only that the process is long since complete and that, because of channelization, we anticipate no occasion for future adjustments. Indeed, it will be noted that, in most cases, accretion is not claimed to the present bank of the Colorado, but only to the bank defining the last natural bed of the river. That is because the further movement or narrowing of the channel, resulting from artificial channelization, has been treated (perhaps too conservatively) as avulsive and as not affecting land titles. See 1982 Field Notes (Item 4, *supra*) at 3; Appendix B, *infra*, 3a.

C

A word of explanation as to the acreage figures is appropriate. As we have noted in describing the surveys, we do not claim additional water rights for all the newly surveyed accretions. In three cases—Items 1(d), 3(a) and 3(b) above—that is because the portion of the accretions that merely completed or "squared off" fractional Sections originally designated as part of the Fort Mojave Indian Reservation were apparently treated as within the Reservation by Special Master Rifkind in the earlier proceedings and were accorded diversion rights by this Court in 1964. Thus, Parcels FM–13A, FM–13B and FM–13C embrace only the accretions to those Sections beyond their normal closing lines, as indicated on the attached sketch map (Appendix B, *infra*, 3a), taken from Exhibit SP 159.

The same considerations lead us to forego a claim for some 21.46 acres of the accretion to Section 10, T. 17N, R. 22W—Item 1(b) above. But, here, a further adjustment is necessary. As indicated in our Exceptions (U.S. Exceptions at 5 n.3), we accept the Special Master's finding that some 72 acres of Parcel FM–12 (cross-hatched on the attached sketch) were awarded diversion rights by the 1964 Decree. Accordingly, we omit any claim for that portion of Parcel FM–12.

In the case of Item 1(a), we claim all the surveyed accretion, but note that it is some 17 acres less than the area of Parcel FM–11. The reason is that those 17 acres, the northern "tail" of the parcel, appear to be embraced within the "LaFollette Tract," as to which the present Master has recommended water rights. See Report at 59, 192.

Finally, we make no claim in respect of Item 1(c) because that small area of accretion was not before the

Special Master and he therefore had no occasion to make a finding as to the practical irrigability of the parcel.

The upshot is that a total of 751 additional gross acres—which the Special Master has found "practicably irrigable"—have now been determined by formal surveys to lie within the boundaries of the Fort Mojave Reservation. This translates to 713 net irrigable acres which, applying the established water duty of 6.46 acre-feet per acre, increases the entitlement of the Reservation by 4,606 acre-feet of diversions. Unsurprisingly, the required adjustment is marginally greater than the overly conservative estimate recited in our Exceptions. Accordingly, the quantification of diversion rights for the Fort Mojave Reservation reflected in Article A(5) of the proposed Decree we submitted with our Exceptions (at 2a) should be amended to substitute 163,537 acre-feet (instead of 162,862 acre-feet) and the total acreage figure should be shown as 25,303 acres (instead of 25,199).

D

It will be noted that, in respect of the two southernmost areas of accretion, the survey was formally accepted in 1963. Obviously, the plat evidencing that survey could have been submitted to the Special Master to support the claim made for those areas. Unfortunately, that was not done, no doubt because this was part of a larger survey that was abandoned and the existence of the approved plat was overlooked. Indeed, the plat was noticed only after the Special Master's Report was filed—disallowing water rights for these and other like accreted lands—and the decision was made to complete the survey to identify the accretions to the north.

We submit, however, that our delinquency in this respect has in no way prejudiced the State Parties. If the newly completed survey is to be taken into account—as

we believe it should—there can be no objection to noticing also the limited survey completed some years ago. It is surely in everyone's interest to avoid a later return to this Court for that purpose.

E

We have been punctilious to avoid any arguable double claim, eliminating any acreage otherwise apparently included as Reservation lands in the prior proceedings or so treated by the present Special Master in his Final Report. The areas now claimed have been determined by official surveys to constitute natural accretion to tracts which are concededly part of the Fort Mojave Reservation. And the Special Master has expressly found the accreted acreage to be practicably irrigable. In these circumstances, it seems plain the additional acreage embraced by our First Exception should be treated as part of the Fort Mojave Indian Reservation and accorded appropriate river diversion rights.

Unless the Court were to accept the State Parties' contention that no administrative determination with respect to adjustment of Reservation boundaries is effective until judicially reviewed and approved, we submit no purpose would be served by referring the matter to the Special Master. Indeed, as we understand them, the State Parties share our view that if other formal and final decisions of the Interior Department with respect to Reservation boundaries are sufficient to justify an award of additional diversion rights, the same rule should be followed here. Of course, in this instance, as for all the other boundary adjustments, this Court's acceptance of the administratively determined boundary changes for the purpose of water allocation would be

without prejudice to any later judicial challenge in an appropriate forum. See the Proviso to Article A of our proposed Decree. U.S. Exceptions at 2a–3a.

Respectfully submitted.

REX E. LEE
Solicitor General

SEPTEMBER 1982

APPENDIX A

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
ARIZONA STATE OFFICE
2400 VALLEY BANK CENTER
PHOENIX, ARIZONA 85073

IN REPLY REFER TO

9600 (942)
Group 367, Arizona

September 17, 1982

Mr. Rex E. Lee
U.S. Solicitor General
U.S. Department of Justice
10th & Constitution Avenue, N.W.
Washington, D.C. 20538

Dear Mr. Lee:

Enclosed are copies of the plat, in three sheets, and the field notes for T. 17 N., R. 22 W., Gila and Salt River Meridian, Arizona, and the plat and field notes for T. 17 N., R. 21 W., Gila and Salt River Meridian, Arizona.

The field notes for T. 17 N., R. 21 W., were approved March 12, 1963, and the plat, which is conformable to the field notes, was accepted, for the Director, Bureau of Land Management, on March 12, 1963 and was officially filed in the Arizona State Office on June 5, 1963.

The field notes for T. 17 N., R. 22 W., were approved September 16, 1982, and the plat, which is conformable to the field notes, was accepted, for the Director, Bureau of Land Management, on September 16, 1982 and was officially filed in the Arizona State Office on September 17, 1982.

In T. 17 N., R. 21 W., those lots in secs. 20 and 32, as shown on the enclosed plat, which lie west of the 1905 meander line are accretion to the Fort Mojave Indian Reservation.

In T. 17 N., R. 22 W., those lots in secs. 4, 10, 22 and 24, as shown on the enclosed plat, which lie southwest of the 1905 meander line are accretion to the Fort Mojave Indian Reservation.

I am sending, under separate cover, the additional copies of the field notes and plats of these two townships which have been requested for your use.

I will be available to answer any technical questions concerning these surveys.

Sincerely,

/s/ James P. Kelley

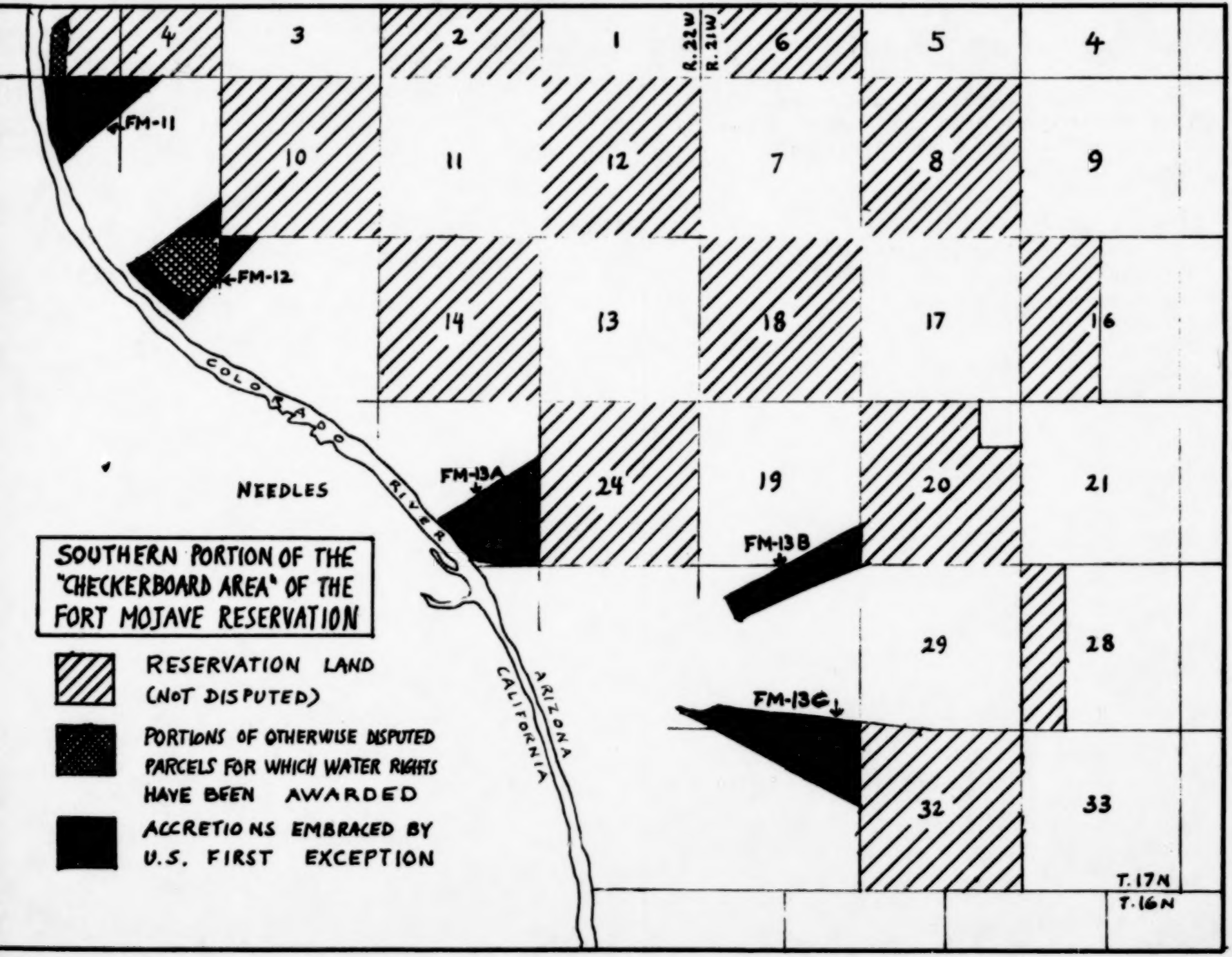
JAMES P. KELLEY
Chief Cadastral Surveyor of Arizona

Enclosures

APPENDIX B

[SKETCH MAP]

APPENDIX B


4
3
2
1
R.22W
R.21W
6
5
4
FM-11
10
11
12
7
8
9
FM-12
14
13
18
17
16
COLORADO RIVER
NEEDLES
FM-13A
24
19
20
21
FM-13B
29
28
FM-13C
32
33
T.17N
T.16N
ARIZONA
CALIFORNIA
SOUTHERN PORTION OF THE "CHECKERBOARD AREA" OF THE FORT MOJAVE RESERVATION
RESERVATION LAND (NOT DISPUTED)
PORTIONS OF OTHERWISE DISPUTED PARCELS FOR WHICH WATER RIGHTS HAVE BEEN AWARDED
ACCRETIONS EMBRACED BY U.S. FIRST EXCEPTION

Office - Supreme Court, U.S.
FILED
MAY 20 1982
ALEXANDER L. STEVAS,
CLERK

No. 8, Original

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

STATE OF ARIZONA, *Complainant*

v.

STATE OF CALIFORNIA, ET AL.

On The Report Of The Special Master

EXCEPTIONS OF THE CHEMEHUEVI, COCOPAH, COLORADO RIVER, FORT MOJAVE AND QUECHAN INDIAN TRIBES

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The Chemehuevi, Cocopah, Colorado River, Fort Mojave and Quechan Indian Tribes respectfully concur in the exceptions and supporting memorandum to the final report of the Special Master filed by the United States.

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CLERK

No. 8, Original

IN THE
Supreme Court of the United States

OCTOBER TERM, 1981

STATE OF ARIZONA, *Plaintiff*,

v.

STATE OF CALIFORNIA, ET AL., *Defendant*.

MOTION TO MODIFY ORDER

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No. 8, Original

In The Supreme Court of the United States

October Term, 1981

State of Arizona,
Plaintiff,

vs.

State of California, et al.,
Defendant.

MOTION TO MODIFY ORDER

This Honorable Court holds the power to change wrong to right. Hence, with this in mind the Quechan Indians joined by their neighboring tribes of the Lower Colorado River filed a petition to intervene in the case at bar requesting special hearings plus legal counsel of their own choosing so that a wrong committed by their trustee, the

United States, could be righted. In the wake of earlier hearings all five Indian tribes claimed that they had received less water than they should have, and that this was due to an inherent conflict of interest affecting their trustee. On Jan. 9, 1979 this Court took cognizance of their request by appointing the Honorable Elbert P. Tuttle as Special Master to conduct the requested hearings.

The special hearings that followed have now been concluded. The Master's Report has been filed. All parties have responded in writing, and this Court has ordered oral argument for one and one-half hours for Dec. 8, 1982, subject to the limitation that there be no more than two speakers for "each side". The Quechan Tribe sincerely believes that unless this Order is modified it could for all practical purposes negate the opportunity to right the wrong heretofore provided by Special Master Tuttle's Order allowing intervention by each tribe with independent legal counsel chosen by them. This result becomes quite clear if one merely reflects

upon the following facts:

First, this is not a case with only two sides. In the beginning there were only two states. The number has increased. In addition, there is the United States appearing for its own interests and as trustee for the Indians. Then, because of the conflict of interest besetting the United States, there are also five autonomous Indian tribes with independent legal counsel.

Second, during the special hearings the Quechan Tribe was consistent with its original position that there existed a conflict of interest. It therefore presented a case against its trustee for failure to adequately represent it in the first hearings and the refusal of the trustee to present any case whatsoever regarding most of the acreage claimed on their behalf in the recent hearings. Special Master Tuttle summarized the situation when he said:

"I believe that the 'omission' of a significant amount of factually supportable

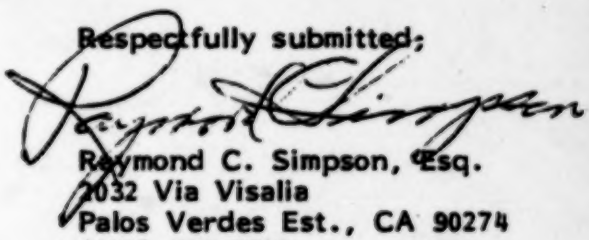
claims clearly occurred in the earlier proceedings. Although the United States lawyers at the earlier trial presented substantail claims for the Tribes, these claims fell short of the maximum possible claims under the standards required by the prior Master. In a paternalistic sense the result obtained by the United States might seem fair because the Tribes received much-needed water rights. But the trustee's duty is not to decide what is fair, his duty is to present the best case for his Indian wards. An objective view of the facts reveals that actual fairness was not achieved in the sense that under the legal standards applied in this case the Tribes would have received more if the United States as trustee had dedicated its efforts to maximizing the Tribes' welfare." (Report at 48-49)

To substantiate its claims the Quechan Tribe engaged independent experts to establish its water entitlement. The results of their work proved that the Tribe's entitlement was considerably in excess of that asserted on its behalf by the United States. In contrast, the other tribes elected to present no evidence regarding the conflict of interest, and this therefore made it imperative for the Quechan Tribe to file a "Separate Response". Thus, against this backdrop it must be noted that the Quechan "side" will not be presented in the oral argument phase of the case at bar unless the Order pertaining to the number of speakers is modified to permit three.

The Quechan Tribe has contacted Mr. Carl Boronky in his capacity as a spokesman for the State Parties. He stated that the States have no objection to a change in the number of speakers since they would also like to have three for the three states. The United States obviously can offer no objection since the number it set forth in

its earlier Motion provided for five speakers. The other four tribes have agreed upon the one speaker to present their "side", but without allowing an additional speaker to present the Quechan "side", the Quechan Tribe would be denied its day in court. Therefore, the Quechan Tribe does hereby move this Honorable Court to modify its Order to permit three speakers.

Respectfully submitted,



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